

## CHAPTER III AIR RESOURCES

## § 225-3.1

## SUBPART 225-3

## FUEL COMPOSITION AND USE—GASOLINE

(Statutory authority: Environmental Conservation Law, § 19-0301)

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## Historical Note

Subpart (§§ 225-3.1—225-3.5) filed Dec. 8, 1988; amds. filed: Sept. 17, 1992 as emergency measure, expired 90 days after filing; Dec. 18, 1992 as emergency measure; Feb. 12, 1993 as emergency measure; April 12, 1993 as emergency measure; June 11, 1993 as emergency measure; Aug. 3, 1993 eff. 30 days after filing; Aug. 10, 1993 as emergency measure eff. Aug. 10, 1993. Amended Subpart title.

**Section 225-3.1 Applicability.** This Subpart applies throughout the State of New York except that the provisions in sections 225-3.4, 225-3.5, 225-3.7, and 225-3.9 of this

Subpart apply only throughout the carbon monoxide control areas in the State of New York as defined by section 225-3.2(b)(3) of this Subpart, and that section 225-3.3(c) of this Subpart applies only throughout the New York City CMSA as defined by section 225-3.2(b)(3)(i) of this Subpart.

#### Historical Note

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**225-3.2 Definitions.** (a) For the purpose of this Subpart, the general definitions of Part 200 of this Title apply.

(b) For the purpose of this Subpart, the following definitions also apply:

(1) *ASTM*. American Society for Testing and Materials.

(2) *Carbon monoxide (CO)*. A colorless, odorless, tasteless gas at standard conditions having a molecular composition of one carbon atom and one oxygen atom.

(3) *Carbon monoxide control area (control area)*. (i) The Consolidated Metropolitan Statistical Area (CMSA) in which a carbon monoxide nonattainment area is located; or

(ii) If the area is not located in a CMSA, the Metropolitan Statistical Area (MSA) in which the area is located; or

(iii) If an area which was designated as nonattainment is redesignated as attainment for carbon monoxide, that CMSA or MSA as long as is necessary to maintain such standard in that area. The following shall be considered to be carbon monoxide control areas:

(a) New York City Consolidated Metropolitan Statistical Area (New York City CMSA). This area consists of the counties of Bronx, Kings, Queens, New York, Richmond, Orange, Rockland, Putnam, Westchester, Nassau and Suffolk.

(b) Syracuse Metropolitan Statistical Area (Syracuse MSA). This area consists of the counties of Onondaga, Oswego and Madison.

(4) *Carbon monoxide control period (control period)*. The dates between which a requirement or prohibition of section 225-3.4 of this Subpart applies.

(5) *Chemical name*. The specific or unique chemical(s) from which oxygen is derived. As applied to oxygenates, the name of the oxygenate as given in Table 2 of section 225-3.5(d) of this Subpart; or, if not included in Table 2, the technical or common name of the oxygenate.

(6) *Conforming gasoline*. Any gasoline which conforms with the requirements of sections 225-3.3 and 225-3.4 of this Subpart.

(7) *Distributor*. Any person who transports or stores or causes the transportation or storage of gasoline at any point between a refinery or importer's facility and a retail outlet or wholesale purchaser-consumer's facility.

(8) *Ethanol blending plant*. Any refinery at which gasoline is produced solely through the addition of ethanol to gasoline, and at which the quality or quantity of gasoline is not altered in any other manner.

(9) *Final distribution facility*. The stationary facility of a distributor from which gasoline is supplied to a retail outlet or wholesale purchaser-consumer's facility; or

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the portable container used to transport gasoline if an oxygenate has or will be added to such portable container prior to delivery to a retail outlet or wholesale purchaser-consumer's facility.

(10) *Gasoline*. A volatile liquid mixture containing hydrocarbons or a blend of this mixture with one or more oxygen containing ashless organic compounds, such as alcohols or ethers, which is suitable for use in motor vehicles with spark-ignition, internal combustion engines and which is commonly or commercially known or sold as gasoline.

(11) *Gasoline bulk plant (bulk plant)*. A gasoline storage and distribution facility with an average daily throughput of 40,000 gallons of gasoline or less.

(12) *Gasoline loading terminal (terminal)*. A gasoline storage and distribution facility with an average daily throughput greater than 40,000 gallons of gasoline or with an emission rate potential of volatile organic compounds of 100 tons per year or greater.

(13) *Nonconforming gasoline*. Any gasoline which does not conform with the requirements of section 225-3.3 or 225-3.4 of this Subpart.

(14) *Numeric allowance*. The maximum margin of error in vehicle miles traveled allowed by the United States Environmental Protection Agency pursuant to 42 U.S.C. section 7512a(a)(2)(A) (See Table 1, section 200.9 of this Title). (Note: As of November 15, 1992, the numeric allowance is five percent for calendar year 1993, four percent for 1994, and three percent for 1995 and subsequent years.)

(15) *Oxygen content*. The ratio of the weight of oxygen in a unit of gasoline to the total weight of the gasoline multiplied by 100, determined through the method specified in section 225-3.5 of this Subpart.

(16) *Oxygenate*. Any substance which, when blended into gasoline, increases the amount of oxygen in that gasoline blend and which is allowed to be used as a gasoline additive pursuant to 42 U.S.C. 7546 (see Table 1, section 200.9 of this Title).

(17) *Oxygenated gasoline*. Gasoline to which at least one oxygenate has been added and which complies with the requirements of section 225-3.4 of this Subpart.

(18) *Refiner*. Any person who owns, leases, operates, controls, or supervises a refinery.

(19) *Refinery*. Any facility, including an ethanol blending plant, which produces gasoline.

(20) *Reld vapor pressure (RVP)*. A measure of the vapor pressure of a gasoline in pounds per square inch absolute at 100°F.

(21) *Reseller*. Any person who purchases gasoline and resells or transfers it to a retailer or a wholesale purchaser-consumer.

(22) *Retail outlet*. Any establishment at which gasoline is sold or offered for sale to the general public for use in motor vehicles.

(23) *Retailer*. Any person who owns, leases, operates, controls or supervises a retail outlet.

(24) *Specific gravity of oxygenated gasoline*. The ratio of the weight of a given volume of oxygenated gasoline at 60°F to the weight of an equal volume of pure water at the same temperature as determined by a hydrometer method and reported to 0.0001 specific gravity.

(25) *Ultimate consumer.* The first person who purchases or obtains gasoline for use in motor vehicles.

(26) *VMT tracking area.* The area in which the vehicle miles traveled (VMT) must be monitored or tracked in accordance with 42 U.S.C. section 7512a(a)(2)(A) (see Table 1, section 200.9 of this Title).

(27) *Wholesale purchaser-consumer.* Any ultimate consumer of gasoline who purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank, substantially under the control of that person, of at least 550-gallon capacity.

#### Historical Note

Sec. filed Dec. 8, 1988; amds. filed: Sept. 17, 1992 as emergency measure, expired 90 days after filing; Dec. 18, 1992 as emergency measure; Feb. 12, 1993 as emergency measure; April 12, 1993 as emergency measure; June 11, 1993 as emergency measure; Aug. 8, 1993 eff. 90 days after filing; Aug. 10, 1993 as emergency measure eff. Aug. 10, 1993.

**225-3.3 Prohibitions and requirements—volatility.** (a) No person shall sell or supply a gasoline to a retailer or wholesale purchaser-consumer, having a Reid vapor pressure greater than 9.0 pounds per square inch (psi) as sampled and tested by methods acceptable to the commissioner, during the period May 1st through September 15th of each year beginning 1989.

(b) Any person who sells or supplies gasoline, subject to subdivision (a) of this section, to retailers or wholesale purchaser-consumers must comply with the requirements of section 225-3.6 of this Subpart which pertain to gasoline RVP.

(c) *Carbon monoxide contingency measure.* (1) A contingency measure, pursuant to 42 U.S.C. section 7502(c)(9) (see Table 1, section 200.9 of this Title) and 42 U.S.C. section 7512a(a)(3) (see Table 1, section 200.9 of this Title), shall be invoked to limit the maximum allowable wintertime RVP of gasoline sold, supplied, or dispensed in the New York City CMSA if any of the following occur:

(i) If any nonattainment area within the New York City CMSA fails to attain the National Ambient Air Quality Standard (NAAQS) for carbon monoxide by December 31, 1995;

(ii) If the annual estimate of actual vehicle miles traveled (VMT), pursuant to 42 U.S.C. section 7512a(a)(2)(A) (see Table 1, section 200.9 of this Title), in the VMT tracking area within the New York City CMSA during the previous calendar year exceeds the numeric allowance incorporated in the most recent forecast of VMT made prior to that calendar year; or

(iii) If an annual updated forecast of VMT, pursuant to 42 U.S.C. section 7512a(a)(2)(A) (see Table 1, section 200.9 of this Title), in the VMT tracking area within the New York City CMSA for subsequent calendar years exceeds the numeric allowance incorporated in the most recent prior forecast of VMT.

(2) Under such a carbon monoxide contingency measure, the following maximum RVP limits of gasoline sold, supplied, or dispensed in the New York City CMSA shall apply:

(i) 11.5 psi during the period September 16th through October 31st of each year;

(ii) 13.5 psi during the period November 1st through March 31st of each year;

(iii) 11.5 psi during the period April 1st through April 30th of each year; and

(iv) 9.0 psi during the period May 1st through September 15th of each year (the summertime gasoline volatility provisions of subdivisions (a) and (b) of this section

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are unaffected by the carbon monoxide contingency measure established in this subdivision).

(3) Prior to its implementation, the carbon monoxide contingency measure, as established in this subdivision, shall be preceded by the following administrative actions:

(i) the administrator of the United States Environmental Protection Agency, or his or her designee, must find that at least one of the conditions in paragraph (1) of this subdivision has occurred; and

(ii) the commissioner must provide notice in the *New York State Register*, within 60 days of a finding as referred to in subparagraph (i) of this paragraph that the contingency measure will be invoked.

(4) The carbon monoxide contingency measure, as established in this subdivision, shall take effect within 12 months from the date of a finding, as referred to in subparagraph (i) of this paragraph.

**Historical Note**

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**225-3.4 Prohibitions and requirements—oxygen content.** (a) Except as provided in section 225-3.9 of this Subpart, beginning November 1, 1992, any gasoline which is sold or dispensed to the ultimate consumer in a carbon monoxide control area during the associated carbon monoxide control period or sold or dispensed, directly or indirectly, to persons who sell, resell, dispense or intend to sell, resell or dispense that gasoline to the ultimate consumer in such a carbon monoxide control area during such a carbon monoxide control period shall meet all of the following requirements:

(1) conform with the oxygen content requirements of Table 1 of this subdivision;

TABLE 1

## OXYGENATED GASOLINE REQUIREMENTS

Control area	Control period	Oxygen content
New York City CMSA	October 1 - April 30	2.7 - 2.9
Syracuse MSA	November 1 - February 29	minimum 2.7

(2) contain only oxygenates which comply with the definition of oxygenate in section 225-3.2(b)(16) of this Subpart;

(3) have the oxygen content determined pursuant to section 225-3.5 of this Subpart;

(4) be accompanied by the records and reports required by section 225-3.6 of this Subpart; and

(5) be labeled pursuant to section 225-3.7 of this Subpart.

(b) No retailer nor wholesale purchaser-consumer shall knowingly accept gasoline, intended for use by the ultimate consumer, unless accompanied by the information required to conform with section 225-3.8(b) of this Subpart.

**Historical Note**

Sec. filed Dec. 6, 1988; renum. 225-3.4, new filed: Sept. 17, 1992 as emergency measure, expired 90 days after filing; Dec. 18, 1992 as emergency measure; Feb. 12, 1993

as emergency measure: April 12, 1993 as emergency measure: June 11, 1993 as emergency measure: Aug. 3, 1993 eff. 30 days after filing: Aug. 10, 1993 as emergency measure eff. Aug. 10, 1993.

**225-3.5 Methods for determining oxygen content.** (a) Any gasoline subject to section 225-3.4 of this Subpart shall be sampled and tested prior to sale or dispensing. Such sampling and testing shall:

- (1) be performed prior to releasing gasoline from a final distribution facility; and
  - (2) be repeated if the oxygen content of the gasoline could have been altered by addition, subtraction or alteration of fuel components such as by commingling with other fuels, chemical or physical processing, or storage prior to the release of the gasoline to retail outlets or wholesale purchaser-consumers.
- (b) Any sampling of gasoline required by this section to determine the oxygen content shall be conducted in accordance with the following:

- (1) the methods set forth in 40 CFR 80, Appendix D (see Table 1, section 200.9 of this Title); or
- (2) any other method approved in advance in writing by the commissioner and the Administrator of the United States Environmental Protection Agency, or his or her designee, on the basis that such method yields substantially similar results as the method listed in paragraph (1) of this subdivision.

(c) The following method shall be used to determine the oxygen content of any gasoline:

(1) Test a sample of the gasoline using one of the following test methods to determine the percent by volume of each oxygenate in the gasoline (all volume measurements shall be adjusted to 60°F):

(i) ASTM Test Method D 4815-89 (see Table 1, section 200.9 of this Title); or

(ii) any other test method approved in advance in writing by the commissioner and the Administrator of the United States Environmental Protection Agency, or his or her designee, on the basis that such test method yields substantially similar results as ASTM Test Method D 4815-89 (see Table 1, section 200.9 of this Title).

(2) Multiply the percent by volume of each oxygenate determined in paragraph (1) of this subdivision by the ratio of the specific gravity of the oxygenate to the specific gravity of the oxygenated gasoline. Specific gravities of oxygenates are set forth in Table 2 of subdivision (d) of this section.

(3) Calculate the oxygen content by weight contribution of each oxygenate by multiplying the product determined in paragraph (2) of this subdivision by the weight fraction oxygen of each oxygenate set forth in Table 2 of subdivision (d) of this section.

(4) Sum the oxygen content by weight contribution of each oxygenate obtained pursuant to paragraph (3) of this subdivision to obtain the total oxygen content of the gasoline.

(5) The above steps for determining the oxygen content of a gasoline are summarized by the following equation:

$$W_{\text{oxygen}} = \frac{\sum (V_{\text{oxygenate}} \times d_{\text{oxygenate}} \times W_{\text{oxygen in oxygenate}})}{d_{\text{gasoline}}}$$

where:

$W_{\text{oxygen}}$  = weight percent of oxygen (oxygen content)

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$V_{\text{oxygenate}}$  = volume percent of oxygenate in blend as determined pursuant to paragraph (1) of this subdivision

$d_{\text{oxygenate}}$  = specific gravity of oxygenate from Table 2 of subdivision (d)

$W_{\text{oxygenate}}$  = weight fraction oxygen contribution of oxygenate from Table 2 of subdivision (d)

$d_{\text{g}}$  = specific gravity of oxygenated gasoline

(d) The weight fraction oxygen and specific gravity values of the common oxygenates listed in Table 2 of this subdivision shall be used in the above equation to calculate the oxygen content of a gasoline. If an oxygenate is not listed in Table 2 of this subdivision, the owner or operator of a refinery, terminal, or bulk plant shall advise the commissioner in writing of its intended use so that the commissioner can decide on the proper specific gravity and weight fraction oxygen values to assign to the unlisted oxygenate.

TABLE 2  
SPECIFIC GRAVITY AND WEIGHT FRACTION OXYGEN  
OF COMMON OXYGENATES

Oxygenate	Weight fraction oxygen ( $W_{\text{oxygenate}}$ )	Specific gravity at 60°F ( $d_{\text{oxygenate}}$ )
methyl alcohol (methanol)	0.4993	0.7963
ethyl alcohol (ethanol)	0.3473	0.7939
normal propyl alcohol	0.2662	0.8080
isopropyl alcohol	0.2662	0.7899
normal butyl alcohol	0.2158	0.8137
isobutyl alcohol	0.2158	0.8058
secondary butyl alcohol	0.2158	0.8114
tertiary butyl alcohol	0.2158	0.7922
methyl tertiary butyl ether (MTBE)	0.1815	0.7460
tertiary amyl methyl ether (TAME)	0.1566	0.7752
ethyl tertiary butyl ether (ETBE)	0.1566	0.7452
diisopropyl ether (DIPE)	0.1566	0.7300

(e) Notwithstanding the requirements in this section for testing to determine the oxygen content of gasoline, the owner or operator of any refinery, terminal, or bulk plant subject to this Subpart may apply to the commissioner for approval to use an alternative method of determining the oxygen content of gasoline. The commissioner shall not approve such an application unless the alternative method proposed has been deemed generally acceptable by the Administrator of the United States Environmental Protection Agency, or his or her designee, and would ensure that the oxygen content of the gasoline would be determined with no less accuracy and reliability than would be achieved through testing in accordance with this section.

#### Historical Note

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**§ 225-3.6****TITLE 6 ENVIRONMENTAL CONSERVATION**

**225-3.6 Records and reports.** (a) The owner or operator of any refinery, terminal, or bulk plant from which gasoline, subject to this Subpart, is distributed must maintain records on the gasoline that is delivered to or distributed from such facilities. These records shall include:

(1) The RVP of the gasoline if subject to section 225-3.3 of this Subpart.

(2) A test report, or other acceptable information, which documents the oxygen content of the gasoline as determined by section 225-3.5 of this Subpart and which contains all measured values used to determine the oxygen content if subject to section 225-3.4 of this Subpart.

(3) A designation of the appropriate time period(s) in which the gasoline is intended to be dispensed to motor vehicles.

(4) Documentation of the volume percent and chemical name of each oxygenate added, the shipment quantity, and the shipment date of all gasoline leaving the refinery, terminal, or bulk plant (documentation may include, but is not limited to, bills of lading, invoice delivery tickets, and loading tickets).

(5) Written certification that the gasoline:

(i) has been tested in accordance with section 225-3.5 of this Subpart;

(ii) conforms with all RVP and oxygen content requirements of this Subpart; and

(iii) is in compliance with all applicable State and Federal regulations which apply during the time period(s) specified pursuant to paragraph (3) of this subdivision.

(b) Persons subject to subdivision (a) of this section shall provide the following records with gasoline which is distributed from facilities:

(1) A copy of the certification produced for paragraph (a)(5) of this section.

(2) Documentation of the maximum RVP of the gasoline if the gasoline was subject to section 225-3.3 of this Subpart.

(3) Documentation of the oxygenate composition of the gasoline as determined by section 225-3.5 of this Subpart including the following information: oxygen content, volume percent of alcohols, volume percent of methanol, volume percent of ethanol, volume percent of ethers, and name and address of person performing the determination.

(4) Designation of the appropriate time period(s) in which the gasoline is intended to be dispensed to motor vehicles.

(5) Documentation of the shipment quantity and the shipment date of the gasoline being distributed.

(c) Each retailer or wholesale purchaser-consumer shall maintain records on each delivery of gasoline. These records shall include all those required to be delivered pursuant to subdivision (b) of this section.

(d) Persons required to maintain records pursuant to subdivisions (a), (b) and (c) of this section must make the records available for inspection during normal business hours, at the location from which the gasoline was delivered, sold, or dispensed, to the commissioner or his or her representative and must furnish copies of these records to the commissioner or his or her representative upon request. Such persons shall maintain all records and documentation required to be made or maintained in accordance with

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this section, including any calculations performed, for at least two years from date of delivery.

**Historical Note**

Sec. added by renum. and amd. 225-3.4, filed: Sept. 17, 1992 as emergency measure, expired 90 days after filing; Dec. 18, 1992 as emergency measure; Feb. 12, 1993 as emergency measure; April 12, 1993 as emergency measure; June 11, 1993 as emergency measure; Aug. 3, 1993 off 30 days after filing; Aug. 10, 1993 as emergency measure off. Aug. 10, 1993.

**225-3.7 Labeling requirements.** (a) During the applicable carbon monoxide control period, all gasoline pumps and other gasoline dispensing devices at retail outlets within a designated carbon monoxide control area shall be labeled as specified in this section. Any person who owns, leases, operates, controls or supervises a retail outlet shall be responsible for compliance with these labeling requirements.

(b) The label shall, except as provided in subdivision (e) of this section, contain the following statement: "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles." This statement shall not be altered, and no additional language shall be inserted within the text.

(c) The label shall also, except as provided in subdivision (e) of this section, contain language, added before or after the statement required in subdivision (b) of this section, which identifies:

(1) the oxygenate class (e.g., alcohol or ether) present in the gasoline, if alcohol comprises at least one percent by volume or if ether, or another oxygenate class, comprises at least two percent by volume; or

(2) "methanol" if methanol comprises at least 0.3 percent by volume of the gasoline.

(d) If the label as required by subdivision (b) of this section is displayed on a gasoline pump or other gasoline dispensing device at times outside the applicable carbon monoxide control period:

(1) the gasoline being dispensed from such pump or dispensing device must have a minimum oxygen content of 2.0 percent; or

(2) the statement required by subdivision (b) of this section must be preceded or followed by the phrase "from (date 1) to (date 2)," where (date 1) and (date 2) are filled in with the beginning and ending dates, respectively, of the applicable carbon monoxide control period.

(e) If the gasoline pump or other gasoline dispensing device is dispensing nonconforming gasoline with an oxygen content below the required minimum 2.7 percent oxygen by weight in accordance with a variance issued by the commissioner pursuant to section 225-3.9(a) of this Subpart, the label shall contain the following statement: "The gasoline dispensed from this pump does not meet standards established to reduce carbon monoxide pollution from motor vehicles but is temporarily authorized to be distributed due to a shortage of supply of gasoline that meets the standard."

(f) Any label required pursuant to this section shall be:

(1) posted on the vertical surface of the gasoline pump or other gasoline dispensing device on each side with gallonage and price meters, on the upper two-thirds of the surface, in a position clearly recognizable, conspicuous and easily readable for the public; and

(2) clearly legible and in block letters that are:

(i) no less than 20-point bold type; and

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(11) in a color that contrasts with the background upon which they are placed.

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**225-3.8 Exceptions and variances—volatility.** (a) Upon application, the commissioner may grant an exception from the requirements of section 225-3.3(a) of this Subpart to a supplier of a gasoline which contains simple alcohols upon a showing that gasoline and gasoline blending components are not reasonably available that, when blended, would enable the resulting fuel to meet the requirements of section 225-3.3(a) of this Subpart, and that granting the exception will not significantly exacerbate ambient ozone levels. Such an exception may be issued for all or a part of the State for up to one year, and may be renewed upon application. The commissioner shall place conditions on exceptions granted pursuant to this subdivision including a maximum RVP allowed and the quantity of gasoline permitted to be supplied under the exception.

(b) Effective September 16, 1989, upon application, the commissioner, after consultation with the Commissioner of the State Energy Office, may grant a temporary variance from the requirements of section 225-3.3 of this Subpart if the applicant for such an exception can demonstrate to the commissioner that quantities of gasoline sufficient to meet the demand in New York State cannot be manufactured in time to meet all the requirements of section 225-3.3 of this Subpart.

(1) The Commissioner of the State Energy Office must certify that there exists an insufficient supply of fuel which conforms to the standards in section 225-3.3 of this Subpart before a temporary variance may be granted under this subdivision.

(2) The commissioner shall impose an interim volatility standard and/or restrictions on the quantity of gasoline permitted to be supplied as conditions of a variance granted pursuant to this subdivision.

(3) The commissioner shall require that an economic adjustment fee must be deposited with the commissioner before a temporary variance will be granted. The economic adjustment fee shall equal the economic benefit that may accrue because of the lower cost of gasoline that does not comply with section 225-3.3 of this Subpart, in comparison with gasoline that does.

**Historical Note**

Sec. added by renum. and amd. 225-3.5, filed: Sept. 17, 1992 as emergency measure, expired 90 days after filing; Dec. 18, 1992 as emergency measure; Feb. 12, 1993 as emergency measure; April 12, 1993 as emergency measure; June 11, 1993 as emergency measure; Aug. 3, 1993 eff. 30 days after filing; Aug. 10, 1993 as emergency measure eff. Aug. 10, 1993.

**225-3.9 Exceptions and variances—oxygen content.** (a) Upon application, the commissioner, after consultation with the Commissioner of the State Energy Office, may issue an order granting a temporary variance from the requirements of section 225-3.4 of this Subpart to allow gasoline to be provided, offered for sale, or sold at an oxygen content below 2.7 percent by weight due to a shortage of gasoline conforming to the requirements of section 225-3.4 of this Subpart.

(1) To be eligible for a variance pursuant to this subdivision, the applicant shall:

(i) demonstrate to the commissioner that quantities of oxygenated gasoline are not reasonably available and cannot be produced in time to meet the requirements of section 225-3.4 of this Subpart due to extreme and unusual circumstances which are clearly outside the control of the applicant;

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(ii) demonstrate to the commissioner that it exercised prudent planning, diligence, and due care and was not able to avoid the nonconformity and has taken all reasonable steps to minimize the extent of the nonconformity;

(iii) show how the requirements of section 225-3.4 of this Subpart will be expeditiously achieved; and

(iv) deposit an economic adjustment fee with the commissioner before the granting of a temporary variance pursuant to this subdivision. The economic adjustment fee shall equal the economic benefit that may accrue because of the lower cost of gasoline that does not comply with section 225-3.4 of this Subpart, in comparison with gasoline that does.

(2) The Commissioner of the State Energy Office must certify that there exists an insufficient supply of gasoline which conforms to the requirements in section 225-3.4 of this Subpart before a temporary variance may be granted under this subdivision.

(3) The commissioner reserves the right to impose an interim oxygen content standard and/or restrictions on the quantity of nonconforming gasoline permitted to be supplied and used under conditions of a variance granted pursuant to this subdivision.

(4) A temporary variance pursuant to this subdivision may be issued for all or part of a carbon monoxide control area for which the shortage of conforming gasoline exists for a period of time up to the duration of the area's designated carbon monoxide control period, and may be renewed upon application.

(b) Upon application, the commissioner may grant an exception from the requirements of section 225-3.4 of this Subpart to allow individual refiners and individual owners or operators of terminals and bulk plants to provide, offer for sale, or sell gasoline at an oxygen content above 2.9 percent by weight within the New York City CMAA.

(1) To be eligible for an exception pursuant to this subdivision, the applicant shall make a demonstration acceptable to the commissioner that the granting of such an exception will not significantly exacerbate ambient levels of air pollutants.

(2) An exception pursuant to this subdivision may be issued for all or part of the New York City CMAA for a period of time up to the duration of the area's designated carbon monoxide control period, and may be renewed upon application.

(3) The commissioner reserves the right to restrict the quantity of gasoline not conforming to the requirements of section 225-3.4 of this Subpart but permitted to be supplied and used under conditions of an exception granted pursuant to this subdivision.

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**225-3.10 Severability.** Each provision of this Subpart shall be deemed severable, and in the event that any section of this Subpart is held to be invalid, the remainder of this Subpart shall continue in full force and effect.

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